



ALCYON, LLC

PROFESSIONAL LAND SURVEYORS

P.O. BOX 218
HAMILTON, MT 59840
406-381-1125

RECEIVED

SEP 17 2009

9/17/08

Board of County Commissioners
215 S. Fourth Street, Ste. A
Hamilton, MT 59840

Ravalli County Commissioners

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Trusten +
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Dear Commissioners:

My client, Ms. Barbara Fink, created new Lot 24A by agricultural exemption in March 2007, per Certificate of Survey No.587775, and the accompanying Agricultural Covenant (copies enclosed). The "remainder" is Lot 24B. The land is outside of any platted subdivision. Ms. Fink now wishes to "re-aggregate" Lots 24A and 24B, thereby eliminating Lot 24A.

Providing some background, lot aggregation outside of platted subdivisions has generally been allowed under RCSR 4-5-1 Relocation of Common Boundary. Although no specific reference to lot aggregation is therein made, the clause has been interpreted to include lot aggregation in that the common boundary is relocated in such a way as to diminish the size of one of the lots to zero area, thereby eliminating that lot. This relocation exemption derives from MCA 76-3-207(1)(a). Furthermore, lot aggregation is specifically allowed in platted subdivisions by both RCSR 4-5-4 and MCA 76-3-207(1)(d). The two exemptions have been read with common intent and meaning. Lot aggregation is simply one type of lot line relocation; it is consistent with the intent and spirit of the law, and the public is not harmed thereby.

For the removal of an agricultural covenant from a parcel created by use of the agricultural exemption, RCSR 3-6 requires the parcel to be reviewed as a minor subdivision. The covenant itself states it may only be removed with the agreement of the Board of County Commissioners. The intent of this regulation is to prevent the creation of a buildable lot in a way that circumvents subdivision review. In particular we note RCSR 3-6 in no way prohibits lot line relocation or aggregation – simply the removal of the agricultural covenant, which is a separate document.

In this case, Ms. Fink is proposing the complete elimination of the covenanted lot, thereby strictly conforming to the intent of RCSR 3-6. It can also be argued that if the two lots are re-aggregated, the covenant need not and in fact does not apply to anything, making it moot. Furthermore, if the covenanted lot ceases to exist, RCSR 3-6 no longer applies, as there is no parcel to which to apply it. The covenant itself may perhaps be left in the records unmodified or revoked; alternatively, the BCC may revoke the covenant, since again, it no longer applies to any parcel.

We are therefore requesting the allowance of the aggregation of Lots 24A and 24B, with possibly an opinion and interpretation from the county attorney's office if deemed necessary.

Sincerely,

George Marshall
George Marshall, PLS

DECLARATION OF AGRICULTURAL COVENANT

Whereas the undersigned, hereinafter referred to as Declarant, owns certain property described as Tract 24A, Certificate of Survey No. 587775-A as recorded in the office of the Clerk and Recorder of Ravalli County, Montana, hereinafter referred to as the subject property.

Now, therefore, Declarant declares that the subject property be held, sold, and conveyed subject to the following provisions, which shall run with the real property and be binding on all parties having any right, title, or interest in the subject property or any part thereof, their heirs, successors, and assigns, and shall bind each owner thereof.

User Restriction. The subject property will be used exclusively for agricultural purposes and no building or structure requiring water or sewage facilities shall be used or erected, or placed on the subject property.

Revocation. This covenant may be revoked only by the mutual consent of the owner of the subject property and the County Commissioners of Ravalli County, Montana.

Enforcement. The County Commissioners of Ravalli County, Montana, are deemed to be a party to this covenant and may enforce this covenant, with the costs of such enforcement to be paid by the prevailing party.

Severability. If any provision or part hereof is found for any reason to be invalid, the remaining portions shall remain in full force and effect.

Barbara A Fink
Barbara A. Fink

3/27/2007
Date

STATE OF MONTANA }

County of Ravalli }
:SS

This instrument was acknowledged before me on March 27, 2007,
by Barbara A. Fink



NOTARY PUBLIC-MONTANA
Residing at Victor, Montana
My Comm. Expires Sept. 15, 2009

8009
Notary Public for the State of Montana

My commission expires 9-15-2009
Residing at Victor

Return: A/cyon PO Box 218 Hamilton MT 59840